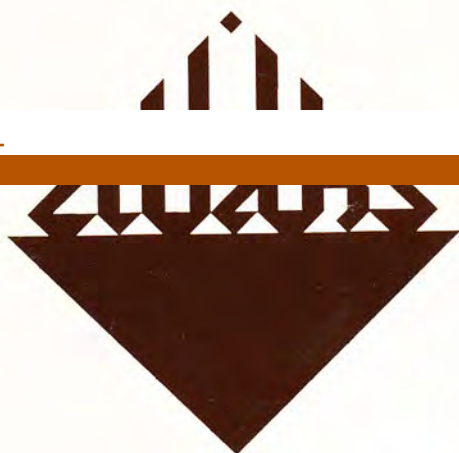


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ISLAM AND MEDICAL SCIENCE:
EVIDENCE FROM MALAYSIAN AND INDONESIAN *FATĀWĀ*
M. B. Hooker

ISLAMIC LEGAL LITERATURE
AND SUBSTANTIVE LAW IN INDONESIA
Nur Ahmad Fadhil Lubis

AN EMPIRICAL ASSESSMENT
OF DIVORCE LAW REFORM IN INDONESIA
Mark Cammack

INDONESIANS IN SAUDI ARABIA:
WORSHIP AND WORK
Laurence Husson

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An Empirical Assessment of Divorce Law in Indonesia

Abstraksi: Pembahasan tentang pengaruh Undang-undang Perkawinan tahun 1974 terhadap tingkah laku perceraian masyarakat Muslim di Indonesia boleh dikatakan langka. Berbagai tulisan yang membahas pemberlakuan Undang-undang tersebut lebih memusatkan perhatian pada aspek-aspek kelembagaan, hukum dan politik.

Pemberlakuan Undang-undang Perkawinan di Indonesia pada 1974 telah memberi kerangka yuridis bagi penyelesaian masalah-masalah keluarga sesuai ketentuan hukum Islam. Secara politis, pemberlakuan UU Perkawinan yang menggantikan UU Perkawinan Hindia Belanda 1930 itu dimaksudkan pemerintah Orde Baru untuk mengakomodasi aspirasi umat Islam dalam hal pelaksanaan syari'at Islam di negara Pancasila. Pada saat yang sama, pemerintah juga memperoleh dukungan dan legitimasi politis dari komunitas Muslim. Namun demikian, ada hal lain yang perlu pula diperhatikan, yakni agenda pemerintah Orde Baru dan masyarakat Muslim umumnya untuk mengatur kehidupan berkeluarga di Indonesia modern.

Salah satu tujuan UU Perkawinan 1974 adalah mengurangi angka perceraian di kalangan keluarga Muslim. Sebuah data sensus menunjukkan, hingga akhir dasawarsa 1950an, tingkat perceraian di kalangan keluarga di Indonesia sangat tinggi, sekitar 20.1% dari total pasangan. Tiga kali lebih tinggi dari pada yang terjadi di negara-negara Barat, seperti Amerika Serikat pada dasawarsa yang sama. Angka tersebut juga paling tinggi di antara negara-negara di Dunia Islam. Di antara beberapa hal yang menjadi penyebab adalah ekonomi, usia perkawinan, mobilitas kaum perempuan dan urbanisasi. Akan tetapi, salah satu sebab utama tingginya angka perceraian tersebut adalah mudahnya melakukan perceraian terhadap pasangan dalam keluarga.

Dalam ketentuan hukum Islam, seperti terkodifikasi dalam ketentuan *fiqh*, perceraian bisa dijatuhkan kepada pasangan karena sebab-

sebab yang relatif sederhana. Sebab-sebab itu sebagiannya dipengaruhi sifat hukum Islam yang patriarkal. Sebuah ketentuan hukum, misalnya, menyebutkan bahwa cerai bisa dijatuhkan kepada istri karena sang suami salah omong dengan mengatakan kepada istrinya: "aku ceraikan engkau" (anti taliqah). Status cerai berlaku untuk mereka tanpa harus menunggu keputusan pengadilan agama. Ketentuan ini disepakati para ulama *fiqh* sebagai salah satu alasan jatuhnya status cerai kepada pasangan Muslim, meskipun di antara mereka terdapat perbedaan mengenai perlu tidaknya kehadiran saksi. Banyak pengamat berkesimpulan, sifat hukum yang cenderung memudahkan inilah yang turut menyebabkan tingginya tingkat perceraian di kalangan keluarga.

Tak satupun usaha untuk menurunkan angka perceraian di atas berhasil, sampai akhirnya pemerintah Orde Baru berhasil memberlakukan UU Perkawinan pada 1974. Pemerintah tampaknya ingin membatasi secara ketat pemberian "talak" (cerai); dan pada saat yang sama memperkuat posisi peradilan agama dalam menghadapi kasus-kasus perceraian. Pasal 38 UU Perkawinan ini menegaskan bahwa "perkawinan berakhir disebabkan tiga hal: 1) kematian, 2) perceraian, atau 3) pemisahan pasangan atas keputusan pengadilan agama." Pasal selanjutnya menyatakan "perceraian hanya dapat dilakukan di depan pengadilan, dengan disertai keterangan saksi-saksi". Dengan demikian, UU ini memberi wewenang penuh kepada pengadilan agama.

Sejak akhir 1980, angka perceraian menunjukkan kecenderungan menurun secara dramatis. Tetapi, jika dilihat secara statistik, penurunan itu tampaknya bukan merupakan efek langsung dari pemberlakuan UU Perkawinan. Hal itu tercermin dari tingkah laku perceraian tetap tinggi di daerah-daerah yang sejak dulu memang mempunyai angka perceraian yang tinggi, seperti di Jawa Barat dan Jawa Timur. Begitu juga perbandingan kecenderungan yang terjadi pada penduduk pedesaan dan perkotaan; keduanya menunjukkan perilaku yang konstan. Tampaknya, pemberlakuan UU Perkawinan 1974 itu tidak banyak mengubah — apalagi menentukan — perilaku perceraian di kalangan penduduk Muslim di Indonesia. Sebuah catatan yang barangkali patut dikedepankan adalah, bahwa penurunan ketentuan hukum *fiqh* ke dalam hukum positif di suatu negara merupakan proses rumit yang melibatkan pandangan masyarakat, pemerintah dan ketentuan agama. Sehingga, jika pandangan masyarakat Muslim masih berpijak pada aturan *fiqh* yang dengan mudah mengesahkan perceraian, aturan UU bisa menjadi tidak berarti apa-apa.

التقييم التجريبي لأحكام الطلاق باندونيسيا

ملخص: ان الدراسات التي أجريت حول تأثير قانون النكاح لسنة ١٩٧٤ على نسبة الطلاق لدى المجتمع الاسلامي باندونيسيا تعتبر نادرة، فقد كانت الأبحاث حول تطبيق ذلك القانون، سواء قبل القيام بتصنيف الأحكام الشرعية أم بعده، تركز اهتمامها على الجوانب التأسيسية والقانونية والسياسية، وهذا البحث (الذي نقوم بتلخيصه) يتعرض لدراسة العلاقة بين تطبيق قانون النكاح والتغيير الطارئ على نسبة الطلاق لدى المجتمع الاسلامي باندونيسيا بمنهج تجريبي.

وكما هو معروف فإن تطبيق قانون النكاح باندونيسيا عام ١٩٧٤م، قد أعطى إطارا تشريعيا لمعالجة المشاكل الأسرية وفقا للأحكام الشرعية، ومن الناحية السياسية، كان تطبيق ذلك القانون كبديل لقانون النكاح الهولندي لسنة ١٩٣٠، يستهدف منه النظام الجديد تحقيق آمال المسلمين في تطبيق الشريعة الاسلامية في دولة البانجاسيلا (Pancasila) (المبادئ الخمسة)؛ ولقد حصلت الحكومة في نفس الوقت على تأييد من المجتمع الاسلامي وشرعية سياسية في اطار تنفيذ برامج تنموية ثابتة؛ ومع ذلك، فهناك أمور تجب مراعاتها وهي جدول أعمال الحكومة والمجتمع الاسلامي من أجل تنظيم الحياة الاسرية في اندونيسيا الحديثة.

وكانت إحدى الغايات التي يستهدفها قانون النكاح لسنة ١٩٧٤ محاولة الحد من نسبة الطلاق عند الأسرة المسلمة؛ وهناك إحصائية تشير إلى أنه حتى أواخر الخمسينيات كانت نسبة الطلاق في اندونيسيا عالية جداً، حيث وصلت إلى ٢٠,١ ٪ من المجموع الكلي للأزواج، وهي نسبة تفوق ثلاثة أضعاف النسبة الحاصلة في الدول الغربية مثل الولايات المتحدة في نفس الفترة؛ وهي نسبة عالية أيضاً بالمقارنة مع الدول الإسلامية؛ ويرجع ذلك - كما يرى الكاتب - إلى عدة أسباب منها اقتصادية، ومنها سن الجواز، ونشاط المرأة وخروجها إلى العمل، وعملية التمدن أعنى الانتقال من الأرياف إلى المدن؛ بيد أن أهم الأسباب هو السهولة التي أتاحتها الشريعة الإسلامية لإيقاع الطلاق إلى حد ما؛ وهذه السهولة هي التي تبناها قانون النكاح الهولندي لسنة ١٩٣٠.

فطبقاً للأحكام الشرعية، على الأقل التي ظهرت في الأحكام الفقهية التي تم جمعها، يمكن أن يقع الطلاق بين الزوجين لأسباب بسيطة، وتتأثر تلك الأسباب عموماً بالاتجاه الرجالي الذي تصطبغ به الأحكام الشرعية، فقد نص حكم في الفقه مثلاً على أنه قد يقع الطلاق لمجرد أن ينطق الرجل خطأ بأن يقول لامرأته: "أنت طالق"؛ ولذلك فقد وقع الطلاق دون انتظار صدور حكم من المحكمة الشرعية، وهذا متفق عليه عند علماء الفقه، على اختلاف منهم فيما إذا كان لا بد من وجود شهود أم لا، ويكون النطق به سبباً لوقوع الطلاق.

وقد ذهب كثير من المراقبين إلى أن هذه السهولة في إيقاع الطلاق هي السبب الرئيسي لارتفاع نسبة الطلاق، ولم تنجح أية محاولة للحد من ارتفاع نسبة الطلاق حتى قام النظام الجديد بتجديد القانون

بصدور قانون النكاح لسنة ١٩٧٤، ويبدو أن الحكومة كانت ترمى بذلك إلى وضع حد نهائى لكثرة الطلاق، وإعطاء مزيد من التأييد والتأكيد على دور المحاكم الشرعية؛ فقد نصت المادة ٣٨ من القانون على أنه "يعتبر الزواج منتهيا لأسباب ثلاثة: (١) بالموت، (٢) بالطلاق، (٣) بقرار المحكمة الشرعية"، وفيما يليها من المواد ينص على أنه "يتم وقوع الطلاق أمام المحكمة الشرعية وبحضور شهود" وهو نص يعطى الشرعية الكاملة للمحكمة الشرعية.

وهناك مؤشرات تدل على هبوط نسبة الطلاق بشكل مفاجئ منذ عام ١٩٨٠م، ولكن بالنظر إليها من حيث الإحصاء، يبدو أنها أي هبوط نسبة الطلاق ليست بفضل تطبيق قانون النكاح، إذ بقيت المناطق التي كانت نسبة الطلاق فيها مرتفعة على حالها، وذلك كما فى جاوره الغربية منها والشرقية؛ وكذلك إذا قورن بين ما فى المدن والقرى والأرياف تدل المؤشرة على نفس المستوى؛ والظاهر أن تطبيق قانون النكاح لسنة ١٩٧٤ لم يغير من نسبة الطلاق لدى السكان المسلمين باندونيسيا، فضلا عن القول بأن وقوع الطلاق كان يتوقف عليه.

ولعل ما تجدر الإشارة إليه هو أن القيام بتقنين أحكام فقهية لتصبح قانونا وضعيا فى الدولة، إنما هو عملية معقدة تتطلب مشاركة من المجتمع والحكومة ورأي الدين، وإلا فإنه مهما يتم التشريع الذى يحد من اللجوء إلى الطلاق مثلا، ولم يزل المجتمع نفسه ملتزما بالنظام الفقهي الذى يجيز وقوع الطلاق بتلك الصورة أي بمجرد النطق به ولو كان خطأ، فإنه يبقى التشريع عديم الجدوى.

I. Introduction

Until comparatively recently, the rate of marital dissolution through divorce among the Muslim populations of South east Asia was among the highest in the world. In the 1950s the divorce rate for the Muslims of Indonesia and Malaysia was several times higher than the highest rates ever achieved in the United States or any other developed nation. It was also much higher than the divorce rate found in any other Islamic country.

As divorce rates in most of the developed world have risen over the past half century, the rate of marital dissolution in Islamic South-east Asia has experienced a dramatic decline. The upward angled trend line for "Western" divorce rates crossed the downward trending line for Southeast Asia sometime in the 1970s or 1980s; today most South-east Asian Muslim groups have divorce rates that are less than half as high the highest rates in the industrialized West.

The extraordinarily high rates of divorce that characterized South-east Asia in the past and the marked decline in the frequency of divorce in recent decades have intrigued and to some extent confounded scholars and policy makers alike. In this paper we examine one aspect of the divorce problem—the effect of legal restrictions on divorce in reducing its frequency in Indonesia. It has long been assumed that part of the explanation for the frequency of divorce among Southeast Asian Muslims was the ease with which a divorce could be obtained. Under Indonesian law as it existed until the mid 1970s, a Muslim husband could divorce his wife at any time for any reason by simply uttering the repudiation formula or "*talak*"—I divorce you. In 1974 the Indonesian legislature passed a law restricting the use of the *talak*. Under the statute, which was not actually implemented until the middle of 1975, a Muslim husband is obliged to obtain judicial approval to divorce, and the repudiation itself must be pronounced in the presence of the court.

A number of commentators have cited the implementation of legal restrictions on the use of the *talak* as one of the causes of declining rates of divorce. In this paper we use the results of a large marriage and family survey conducted in 1993 to evaluate that claim. Our analysis of the survey results confirms the conclusions of other researchers that the frequency of divorce in Indonesia has been declining since the early 1950s. The survey data also show, however, that the imposition of legal restrictions on divorce in the mid-1970s had no effect on that long term decline.

II. The Divorce Problem

The termination of marriage through divorce is commonly regarded as a matter of significant social concern. Marriage is the basis on which important social and legal rights and obligations are defined and allocated, and the dissolution of marriage often entails economic hardship and social and psychological dislocation. Because marriage is the foundation for the basic unit of reproduction, disruption of marriage frequently has significant consequences for children as well. On the other hand, the experience in countries where divorce is not permitted demonstrates that marriages cannot be maintained by the power of legal rules alone.

Beyond its practical importance, a society's divorce practice is also significant as an indication of its conception of marriage.¹ A culture's understanding of the terms of the marriage relationship is perhaps nowhere more clearly revealed than in the arrangements it makes for the dissolution of marriage. Changes in patterns of divorce or in regulating the consequences of divorce shed light on less observable changes in social understandings of the meaning of marriage.

For much of the twentieth century and probably longer, the Muslims of Southeast Asia had the highest recorded rate of marital dissolution through divorce of any major group in the world.² In the 1950s the ratio of divorces to marriages occurring in the same year for Indonesian Muslims ranged around 50 percent.³ The general divorce rate—the number of divorces per 1000 persons aged 15 and over—was 15.1. By contrast, the general divorce rate in the United States in 1950 was 3.5, and the divorce rate in Egypt, highest among Islamic countries in the Middle East, was 4.8.⁴

The frequency of divorce among some sub-groups was higher still. In the Indonesian province of West Java the general divorce rate in the mid 1950s was nearly 25 per 1000 population.⁵ Among all Malays in peninsular Malaysia the general divorce rate for 1950 was 20.3, while the northwest coast state of Kelantan had an astonishing general divorce rate of 43.1 in 1950,⁶ and maintained a ratio of divorces to marriages of 70 percent during the ten years between 1948 and 1957.⁷ By comparison, by 1990 the general divorce rate in the United States, highest among developed nations, had reached "only" 6.0, less than half the rate among Indonesian Muslims in the 1950s.⁸

Although divorce data for the region before the 1950s are not as precise or comprehensive, the available information all points to the conclusion that high rates of divorce had been prevalent in the re-

gion for some time.⁹ Census data for Java and the adjacent island of Madura during the years 1929 through 1931 show a ratio of divorces to marriages over 50 percent.¹⁰ On the basis of data from locations in Central Java, Gavin Jones has estimated that the ratio of divorces to marriages ranged between 40 percent and 55 percent between 1830 and 1880.¹¹ More impressionistic information suggests that divorce was common throughout Southeast Asia in earlier periods as well.¹²

The Southeast Asian case illustrates that judgments about whether divorce is socially good or bad or how much divorce is "too much" are problematic. On the one hand, for many young Southeast Asian girls, easy divorce was a welcome antidote to a practice of non-consensual child marriage. Many of the divorces in the region occurred in marriages of relatively short duration, some that were not even marriages in any but a technical legal sense. According to various studies, as many of 50 percent of divorces were to marriages that did not produce children.¹³ Women initiated or acquiesced in a large percentage of divorces. On the other hand, frequent divorce undoubtedly took a toll on many women and children. Although most occupations were open to women, and divorced wives could usually find a way to support themselves, the lot of a single mother in a country of widespread poverty was certainly not easy.¹⁴

Nevertheless, the high rate of divorce in Southeast Asia has long been regarded as a serious social problem, especially as it affects women.¹⁵ Concern about divorce, child marriage and polygamy, voiced most consistently by an energetic and well organized women's movement,¹⁶ produced a more or less steady stream of marriage reform initiatives beginning in the 1930s when the Dutch proposed changes in Islamic marriage law as part of a broader reorganization of Islamic legal institutions.¹⁷ None of the efforts to impose legal restrictions on the availability of divorce was successful until the government of President Suharto finally won approval of a National Marriage Act in 1974.

The divorce provisions of the 1974 Marriage Act provide that "marriage can be dissolved because of a) death; b) divorce or c) on the decision of the court."¹⁸ The following article states that "divorce can only be carried out in the presence of the Court";¹⁹ that "to carry out divorce there must be adequate reason why the husband and wife can no longer live together in harmony; and c) that the procedures for divorce would be spelled out in separate implementing regulations."²⁰ The next Article states "divorce complaints shall be filed with the

Court," and that the procedures for such complaints would be included in separate regulations.²¹

Regulations implementing the Marriage Act were promulgated in 1975.²² The regulations establish two separate divorce procedures, one that is available only to men married according to Islamic law and a second for the use of all others. Under the first procedure, a Muslim husband "who is going to divorce his wife, must file a petition with the court where he resides, containing a statement of his intention to divorce his wife, accompanied by his reasons, together with a request that the court convene for such purpose."²³ The court is instructed to examine the petition, and to convene for the purpose of witnessing the divorce only if it finds that one of six grounds for divorce are satisfied, and if it is of the opinion that the couple can no longer live in harmony as husband and wife.²⁴ The divorce is deemed valid from the date it is "expressed" in court,²⁵ and is evidenced by a "Certificate Concerning the Occurrence of Divorce."²⁶ The second set of procedures establish a contentious divorce action including provisions for notice and opportunity to be heard.²⁷ Divorce is available under this procedure based on the same six grounds required for a petition divorce. The regulations provide that the Court's "decision regarding the divorce complaint is to be pronounced in open court,"²⁸ and state that the divorce is deemed effective upon the issuance of the court's decision.²⁹

III. The Impact of the Law on Divorce Behavior

The frequency of divorce began to decline in Indonesia well before implementation of legal restrictions on divorce contained in the 1974 Marriage Law. Although the onset of the decline cannot be specified with precision, and the trend doubtless began at different times in different parts of the country, the rate of divorce for the Muslim population as a whole was clearly declining by the early or mid 1950s. Using official records of the number of divorces registered annually, Gavin Jones has shown that the general divorce rate for all Indonesian Muslims fell from 16.7 in 1955 to 1.1 in 1990.³⁰ The ratio of divorces to marriages also declined precipitously—from around 50 percent in the early 1950s to less than 10 percent in the 1990s.³¹ Our analysis of survey data from *The 1993 Indonesian Family Life Survey* (IFLS)³² reveals comparable changes. We use event history methodology³³ to convert the reported beginning and ending of marriages into a year-by-year record of the number of people both married and di-

vorced in any given year, from which we can calculate the probability of marital disruption in any given year. Between 1950 and 1990 the probability of divorce fell from about 5 percent to about .5 percent, a decrease of ten-fold, which is roughly comparable to the decrease in the general divorce rate.

It is apparent from the timing of the onset of the trend in declining divorce rates that the marriage law was not the sole or precipitating factor in the change in divorce behavior. On any measure of divorce and regardless of the data source used, by 1975 when the new restrictions on the *talak* went into effect, dramatic reductions in the rate of divorce had already taken place. According to Jones' calculations based on government records, the divorce rate by 1975 had declined to 4.6 per 1000, less than one third its 1950s level.³⁴ Our analysis of the survey data reveal a probability of divorce slightly above 1 percent, also less than a third the probability in 1950. All agree that the enactment of legal restrictions on the availability of divorce at most accelerated a trend already well under way.

Although it is clear that factors other than the marriage law contributed to the changes in divorce behavior, a number of analysts claim to have identified a link between the enactment of legal restrictions on divorce and declining rates of marital disruption. Based on an analysis of official court records, Gavin Jones has concluded that legal restrictions on divorce "played an important role in strengthening a trend that was clearly already established."³⁵ Another less systematic analysis based on national statistics cross checked with local records claimed to have identified a 70 percent reduction in the divorce rate following the implementation of the statute.³⁶ The most in-depth evaluation of the effect of the marriage law on divorce behavior is a study by Jones, Asari and Djuartika that focuses on West Java.³⁷ Based on registered marriages and divorces, the authors find a sharp drop off in the frequency of divorce in 1976, the first year after the law went into effect.³⁸ The decline in 1976 was preceded and followed by much smaller increases in divorce, presumably short term effects of the law. On this basis the authors cautiously conclude that the law affected the rate of divorce to some extent.³⁹ In addition to these published studies, it has been widely assumed that the Marriage Act has successfully inhibited divorce.⁴⁰

In order to evaluate the impact of the law on the long term trend toward lower rates of divorce we plotted the probability of divorce since 1948. Data for our analysis are taken from *The Indonesia Family*

Life Survey.⁴¹ The IFLS is based on interviews with a probability sample of 7224 households spread across 13 provinces on the islands of Java, Sumatera, Bali, Kalimantan, Sulawesi, and the islands of West Nusa Tenggara. The sample covers approximately 83 percent of the Indonesian population. The survey includes information on fertility, marriage, health, education, migration and employment. Marital disruption is determined by reported years when marriages began and ended and the reasons for termination. Marriages ending because of the death of either spouse were not considered because of our focus on divorce.

Figure 1 shows the trend in marital disruption since 1948. The probabilities are averaged over three year periods to eliminate some of the random fluctuation due to sampling error. Some of the variation is still most likely because of sampling error. Despite this variation, there is a clear and persistent decline in marital disruption throughout this period. The decline appears somewhat steeper before the mid 1960s, but the trend does not appear to differ before and after the implementation of the marriage law.

Table 1 reports results of various logistic regression models predicting the marital disruption rate. The first model fits a linear trend. The coefficient for year indicates that the rate has declined by nearly seven percent per year. The two subsequent models fit a quadratic trend (a term for year squared is added) and a logistic trend (the natural logarithm of year is used). Although either of these two models would account for the nonlinear trend in theory, the statistical fit, as judged by the X^2 statistic, is not better in these two alternative models. In the second set of estimates, an additional variable is included that is coded "0" before the passage of the law (1975 or earlier) and "1" after 1975. The coefficient for this variable ("law") shows the average difference in divorce before and after the law passed after the long term trend has been taken into account indicates that disruption rates were actually higher after the passage of the law in the linear model. This could be an artifact of the nonlinear trend, however. In the quadratic model the coefficient for "law" is also positive, but in the logistic model the effect is virtually zero. In no model is the coefficient for "law" statistically significant. In other words, the change after the law could easily be an artifact of fluctuation due to sampling.

The third set of models tests to see whether the trajectory of the divorce rate shifted after the passage of the law. For example, if

implementation of the law took several years such that the effect became more obvious in subsequent years, then we would observe a change in the slope of the line after 1975. The interaction term modeling this change in trajectory (the product of "law" and "year") is not large or statistically significant in any of the three models, indicating that the slope did not change appreciably after the passage of the law.

To determine whether the statute may have had an effect in some regions but not others and possible differences between urban and rural areas we estimated the simple form of the model with linear decline and a possible shift after the passage of the law for major regions and for rural and urban areas (see Table 2). The decline appears to be somewhat steeper in Sumatera, West Java and Central Java, than in East Java and outlying islands. The decline is nearly equivalent in rural and urban areas. In some regions the coefficient for "law" is positive, and in other regions it is negative, but in no case is the effect of the law statistically significant. In other words, chance variations due to sampling could have produced the results. Thus, it appears that the passage of the law had no large scale impact on divorce trends.

IV. Conclusion: Why the Law Did Not Affect Behavior

In explaining the discrepancy between our findings and the results of earlier research, the most conspicuous difference is our use of a different data source. We have relied on self reports of marital history, whereas the studies that have concluded that the divorce rate declined following the implementation of the law rely on records of officially recognized divorces. The fact that the two measures of the rate of divorce do not coincide indicates that some people have divorced (or, more precisely, regard themselves as having divorced) without having complied with state prescribed procedures. For that to be the case, some of those who consider themselves divorced must accept criteria for "divorce" other than those specified by state marriage rules.

Although the matter cannot be demonstrated conclusively, it appears that the reason the enactment of legal restrictions on divorce did not affect the rate of marital disruption is because Islamic legal definitions of divorce continued to govern the marriage behavior of a significant part of the population after the passage of the law. In other words, a portion of the Muslim community continued to regard the Islamic *talak* as efficacious after the enactment of the Marriage Act, and used the *talak* to dissolve their marriages without first obtaining judicial approval.⁴²

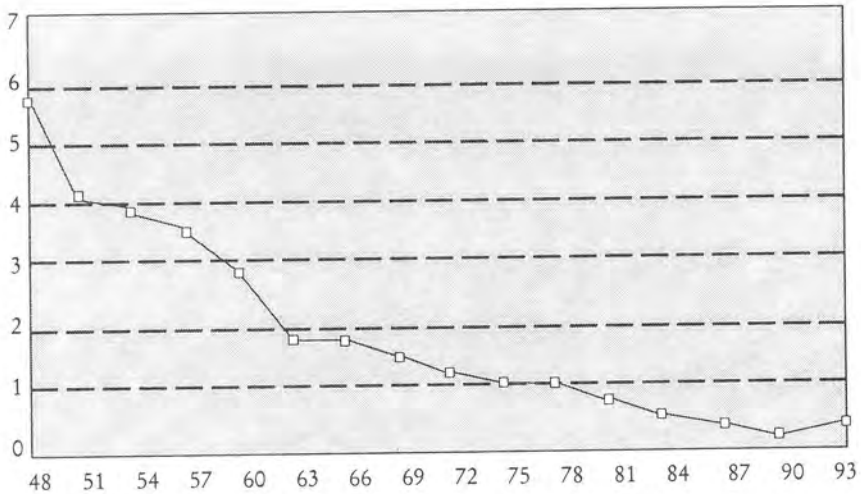
End Notes

1. See Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (1985), pp. 366-78, (discussing new understanding of marriage embodied in U.S. no-fault divorce laws).
2. See Phillip Guest, *Marital Dissolution and Development in Indonesia*, J. Comp. Family Studies (1991), pp. 95, 97. (comparing probability of marital dissolution during first five years and second five years of marriage among 27 countries included in studies carried out under auspices of the World Fertility Survey).
3. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 183.
4. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), pp. 180-81.
5. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 183.
6. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 183.
7. Douglas A. Raybeck, *Social Stress and Social Structure in Kelantan Village Life*, in *Kelantan: Religion, Society and Politics in a Malay State* (William R. Roff ed., 1974), pp. 225, 228.
8. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 183.
9. Pre-1950s divorce rates for the highest divorce regions could hardly have been higher. Gavin Jones notes that in order to maintain 1950s ratios of divorces to marriages, some people must have been marrying, divorcing, remarrying, and divorcing all in the same year. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 185.
10. Jan Prins, *Adatlaw and Muslim Religious Law in Modern Indonesia* I Welt des Islams (1951), pp. 283, 290. Cora Vreede-de Stuers, *The Indonesian Woman: Struggles and Achievements* (1960), p. 129.
11. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 187.
12. Anthony Reid, *Southeast Asia in the Age of Commerce, 1450-1680: The Lands Below the Winds* (1988), pp. 152-53.
13. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), pp. 235.
14. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 235, citing Valerie J. Hull, *Fertility, "Socioeconomic Status, and the Position of Women in a Javanese Village"* (PhD. Dissertation, Australian National Univ., 1975), p. 228.
15. See e.g. Jan Prins, *Adatlaw and Muslim Religious Law in Modern Indonesia* I Welt des Islams (1951), pp. 283, 290, in which leading scholar of Indonesian law declares divorce "Java's severest socio-juridical problem."
16. See generally Cora Vreede-de Stuers, *The Indonesian Woman: Struggles and Achievements* (1960), pp. 89-99.
17. The proposed marriage ordinance is discussed in Harry J. Benda, *The Crescent and the Rising Sun: Indonesian Islam Under the Japanese Occupation* 88-89 (1958); Jan Prins, *Adatlaw and Muslim Religious Law in Modern Indonesia* I Welt des Islams (1951), pp. 283, 294-95; Cora Vreede-de Stuers, *The Indonesian Woman: Struggles and Achievements* (1960), pp. 108-10.
18. National Marriage Act, Law No. 1, Art. 38 (1974), Indon.
19. National Marriage Act, Law No. 1, Art. 39(1) (1974), Indon.
20. National Marriage Act, Law No. 1, Art. 39(3) (1974), Indon.
21. National Marriage Act, Law No. 1, Art. 40(2) (1974), Indon.
22. The implementing regulations were issued on April 1, 1974 and went into effect on October 1 of 1974. They are contained in Gov. Reg. No. 9 (Indon.: 1974).
23. Gov. Reg. No. 9, Art. 14 (1974), Indon.

24. Gov. Reg. No. 9, Arts. 15-16 (1974), Indon.
25. Gov. Reg. No. 9, Art. 18 (1974), Indon.
26. Gov. Reg. No. 9, Art. 17 (1974), Indon.
27. Gov. Reg. No. 9, Arts. 20-34 (1974), Indon.
28. Gov. Reg. No. 9, Art. 34(1) (1974), Indon.
29. Gov. Reg. No. 9, Art. 34(2) (1974), Indon.
30. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia*, table 5.8 (1994).
31. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia*, figure 5.1 (1994).
32. For a description of the IFLS data set see pp. 102-103.
33. Heaton & Call (1995)
34. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), table 5.8.
35. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p.259. Professor Jones notes that enforcement of the law is sometimes slack, and acknowledges that not all marriages and divorces are registered. He concludes, however, that these practices are probably not widespread. Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (1994), p. 259.
36. June S. Katz & Ronald S. Katz, *Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited*, 26 Am. J. Comp. Law 309 (1978), p. 310.
37. Gavin W. Jones, Yahya Asari, & Tuti Djuartika, "Divorce in West Java", 35 J. of Comp. Family Studies (1995), p. 395.
38. Gavin W. Jones, Yahya Asari, & Tuti Djuartika, "Divorce in West Java", 35 J. of Comp. Family Studies (1995), p. 395, Figure 1.
39. Gavin W. Jones, Yahya Asari, & Tuti Djuartika, "Divorce in West Java", 35 J. of Comp. Family Studies (1995), pp. 395, 414.
40. See Geoffrey McNicoll & Masri Singarimbun, *Fertility Decline in Indonesia: Analysis and Interpretation* (1986), p. 96 (noting that 1974 Act makes divorce more difficult); Graeme J. Hugo, et al., *The Demographic Dimension in Indonesian Development* (1987), p. 163 (speculating that the law has "reinforced existing long term trends"); William J. Goode, *World Changes in Divorce Patterns* (1993), p. 287 (noting the legal restrictions on divorce in discussing declining divorce rates in Indonesia).
41. Frankenberg & Karoly (1995).
42. A lack of awareness of the law's requirements is undoubtedly responsible for some degree of non-compliance with statutory procedures. Localized studies of the extent of popular knowledge of the requirements of the Marriage Act have found consistently low levels of awareness. Lack of knowledge of the law is plainly not, however, the explanation for the discrepancy between our findings and those of other researchers, since the evidence for a decrease in divorce following the implementation of the Marriage Act is based on a decline in the number of registered divorces. The evidence of widespread lack of awareness of the law suggests that official records indicate understate the rate of divorce, both now and in the past.

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Figure 1
Trend in Matril Disruption



Source: 1993 Indonesian Family Life Survey

Table 1
Logistic Regression Models Showing the Trend
in Matril Disruption and the Impact of the Marriage Law

| | Fuctional Form of Trend | | |
|---|-------------------------|-----------|----------|
| | Linear | Quadratic | Logistic |
| I. Yearly trend | | | |
| year | -.067* | -.071* | -4.715* |
| year squared | — | .00003 | — |
| model x ² | 1278.5 | 1278.6 | 1272.6 |
| II. Yearly trend and law | | | |
| year | -.071* | -.063* | -4.733* |
| year squared | — | .00006 | — |
| law | .119 | .128 | .007 |
| model x ² | 1280.9 | 1281.0 | 1272.7 |
| III. Yearly trend, law, and change in trend after the law | | | |
| year | -.070* | -.084 | -4.421* |
| year squared | — | .0001 | — |
| law | .389 | .835 | 1.664* |
| law x year | -.004 | -.010 | -.021* |
| model x ² | 1281.1 | 1281.2 | 1281.5 |

*statistically significant at the .05 level

Table 2
Logistic Regression Models Showing the Trend
in Maternal Disruption by Region and Urbanization

| | | Linear | Law |
|---------------|--------------|--------|-------|
| Region: | Sumatra | -.084* | .401 |
| | Jakarta | -.075* | .095 |
| | West Java | -.073* | .144 |
| | Central Java | -.083* | .096 |
| | East Java | -.058* | -.034 |
| | Other Island | -.054* | -.113 |
| Urbanization: | Urban | -.067* | .008 |
| | Rural | -.073* | .164 |

*statistically significant at the .05 level